

## REMARKS

This amendment is in response to the non-final Office action mailed on July 8, 2008. Claims 1-22 are pending with claims 17 and 20 objected to, claims 1-16, 18, and 19 rejected, and claims 21 and 22 newly added.

### *Allowance of Claim 17 as New Claim 21*

Claim 17 was deemed allowable if rewritten in independent form. As a result, the Applicant has added claim 21 that presents the limitations of dependent claim 17 and independent claim 15. Claim 21 also incorporates the typographical corrections made to claim 15. Claim 21 is therefore in condition for allowance and the Applicant respectfully requests that a notice of allowance be granted.

### *Allowance of Claim 20 as New Claim 22*

Claim 20 was deemed allowable if rewritten in independent form. Similar to the addition of claim 21, the Applicant has added claim 22 that presents the limitations of dependent claim 20 and independent claim 15. Claim 22 also incorporates the typographical corrections made to claim 15. As a result, claim 22 is in condition for allowance and the Applicant respectfully requests a notice of allowance.

### *Correction of Formalities*

Claims 1, 10, and 19 have been amended to correct the informalities noted by the Examiner. Specifically, claim 1 has been amended to delete the phrase “of the type,” and claims 10 and 19 have been amended to provide proper antecedent basis for the “spring.”

In preparing this response, the Applicant noted and corrected the following typographical errors: claims 5 and 6 (removed shorthand phrase for “stationary sleeve”), claim 7 (depends upon claim 1, not claim 3), claims 8, 9, and 11 (added periods at end of claims), claim 12 (deleted superfluous phrase “extending between the sleeve and the plate”), claim 13 (describes “plurality of displays,” not “scales,” as highlighted by dependent claim 14), claim 15 (removed shorthand phrase for “load support zones” and clarified connection to “displays,” not “scale”), claim 16

(describes “display,” not “scale”), and claim 19 (clarified “corresponding indicator”). No new matter was added by any of the corrections, nor were any of the corrections made for any purpose related to patentability.

***Claim Rejections - 35 U.S.C. § 102(b)***

Claims 1-14 were rejected under 35 U.S.C. § 102(b) as being anticipated by United States patent number 3,126,069 (“Shepley”).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2123 (citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Moreover, the “identical invention must be shown in as complete detail as is contained in the . . . claim.” MPEP § 2123 (citing Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Lastly, while “identity of terminology is not required,” the “elements must be arranged as required by the claim.” MPEP § 2131 (citing In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Claims 1-14 are not anticipated by Shepley. The Office action fails (1) to establish that Shepley discloses each and every element found in claims 1-14, (2) to describe how Shepley anticipates the claimed invention with the same level of detail found in claims 1-14, and (3) to discuss how Shepley purportedly discloses the arrangement of the elements required by claims 1-14.

The Office action concludes that the “functional language in the preamble of claim 1” carries “no patentable weight since it seems to define no structure.” However, a “claim preamble has the import that the claim as a whole suggests for it.” MPEP § 2111.02 (citing Bell Communications Research, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995)). Therefore, if “the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if

in the balance of the claim.” MPEP § 2111.02 (citing Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999)).

Reading claims 1-14 in context indicates that the lift operation “including a stationary cylinder and an associated piston that is extendable and retractable with respect to the cylinder at a load support zone of the load to correspondingly raise and lower the load,” in context, “give[s] life, meaning, and vitality” to the claims. For example, claim 5 states that “the sleeve is connected to the cylinder via a bracket attached to the cylinder.”

In light of the above, while the Office action states that “Shepley has a position indicator consisting of a piston (31) in a cylinder (32), a hydraulic linkage (36), and an indicator (38),” as though anticipating claims 1-14, a review of Shepley leads to the conclusion that the elements and their arrangements bear little if any relation to the elements of claims 1-14, especially when giving due weight to the structure found in the preamble of claim 1.

For example, the bale weight indicator mechanism of Shepley does not include the stationary cylinder and associated piston that is extendable and retractable to raise and lower the load called for in claim 1. The “piston 31” of Shepley simply reacts to the movement of an adjacent chute 22 to allow the weight of the bale to be recorded. Shepley at Col. 3, Lns. 7-27. This “piston 31” is clearly not of the type of cylinder and piston contemplated in claims 1-14 to raise and lower the load. Therefore, when claim 1 is read in context, Shepley does not anticipate independent claim 1 or claims 2-14 that depend therefrom.

As another non-exhaustive example of Shepley failing to disclose all of the elements of claims 1-14, Shepley clearly does not include a sleeve that is “connected to the cylinder via a bracket attached to the cylinder” as required by claim 6. Furthermore, Shepley does not disclose a display comprising “a cylinder having a closed end connected to one end of a spring, and wherein the spring is connected at a second end to the indicator.”

In light of the above, claims 1-14 are not anticipated by Shepley. The Applicant respectfully requests the issuance of a notice of allowance for claims 1-14.

Claims 1-14 were also rejected under 35 U.S.C. § 102(b) as being anticipated by United States patent number 4,098,221 (“Mickelson et al.”).

Similar to the remarks made in relation to Shepley, claims 1-14 are not anticipated by Mickelson et al. Again, the Office action fails (1) to establish that Mickelson et al. discloses each and every element in claims 1-14, (2) to describe how Mickelson et al. anticipates the claimed invention with the same level of detail found in claims 1-14, and (3) to discuss how Mickelson et al. purportedly discloses the arrangement of the elements required by claims 1-14.

The three sentences of the Office action do not establish that Mickelson et al. discloses each and every element present in claims 1-14. In general, Mickelson et al. plainly does not include the stationary cylinder and associated piston that is extendable and retractable to raise and lower the load, as called for in the preamble of claim 1. When the preamble of claim 1 is given the appropriate patentable weight, claims 1-14 are unmistakably distinct from Mickelson et al.

As another non-exhaustive example of a claimed element not present in Mickelson et al., the drum rotation indicator of Mickelson et al. fails to disclose “a display including a scale and enclosing an indicator” as called for in claim 1. Mickelson et al. discloses a readout plunger 28/40/58 that moves such that it “enable[s] the crane operator to physically sense linear movement of a cable.” Mickelson et al., Col. 1, Lns. 8-9. Thus, Mickelson et al. does not disclose the claimed display.

Moreover, claim 2 calls for “a cable assembly having a proximal end attached to the load.” Even assuming that Mickelson et al. includes a cable assembly, the cam follower 23/34/54 is not attached to the load. The cam follower 23/34/54 engages the hoist drum 14/33/53, not a load. And, in any event, the cam follower 23/34/54 is not attached, or even biased, to the hoist

drum 14/33/53. See Mickelson et al. at Col. 3, Lns. 30-34 (“When the operator releases pressure on the readout plunger, the cam will push the follower back, and since there is no force on the plunger, the indicator will automatically shut-off, when the follower clears the cam.”). Therefore, for this additional reason, claim 2 is not anticipated by Mickelson et al.

As further examples: Mickelson et al. does not disclose a sleeve that is connected to a cylinder via a bracket attached to the cylinder, as called for in claim 6. Mickelson et al. does not disclose a linkage attached to an upper end of the indicator, as called for in claim 8. Mickelson et al. does not disclose a display including a cylinder having a closed end connected to one end of a spring, and wherein the spring is connected at a second end to the indicator, as found in claim 10.

For at least the reasons discussed above, Mickelson et al. does not anticipate claims 1-14. Therefore, claims 1-14 are in condition for allowance, and the Applicant requests that a notice of allowance be issued for claims 1-14.

***Claim Rejections - 35 U.S.C. § 103(a)***

Claims 15, 16, 18, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over United States patent number 5,890,721 (“Schneider et al.”) in view of United States patent number 4,894,924 (“Nakanishi et al.”).

The Office action fails to establish a prima facie case of obviousness with respect to claims 15, 16, 18, and 19. The statement that “[i]t would have been obvious to use the level indicating system of Nakanishi with the hydraulic jack lifting system of Schneider motivated by its are recognized functional equivalence” is both confusing and conclusory. The statement provides no support for the proposition that Schneider et al. and Nakanishi et al. make claims 15, 16, 18, or 19 obvious. “The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.” MPEP § 2143.

In addition, “[w]hen evaluating claims for obviousness under 35 U.S.C. 103, all the limitations of the claims must be considered and given weight.” MPEP § 2143.03. A review of Schneider et al. and Nakanishi et al. shows that each and every element of claims 15, 16, 18, and 19 are not taught, either expressly or inherently.

For example, claim 15 calls for “first and second linkages connected between the first and second load support zones, respectively, and the first and second displays, respectively, wherein each linkage transfers movement of the corresponding load support zone by movement of a medium through a conduit to move the corresponding indicator relative to the scale.” Neither the liquid level measuring system of Nakanishi et al. nor the vehicle leveling system with excess slope indicator of Schneider et al. teach the claimed arrangement of elements.

Specifically, the vehicle leveling system of Schneider et al. teaches use of an electronic level sensor, preferably a “dual axis clinometer,” Schneider et al., Col. 8, Ln. 7, not linkages connected between support zones and displays as called for in claim 15. Turning to Nakanishi et al. does not remedy the incomplete teachings of Schneider et al. In fact, Nakanishi et al. also teaches use of an electronic position sensor that senses the movement of a magnetic head to represent the movement of the individual displacement sensor. Nakanishi et al. at Col. 3, Lns. 40-51.

Schneider et al. and Nakanishi et al. actually teach away from the contextual arrangement of elements found in claim 15. Specifically, neither Schneider et al. nor Nakanishi et al. teach or suggest linkages connected between load support zones and displays such that each linkage transfers movement of the corresponding load support zone by movement of a medium through a conduit to move a corresponding indicator relative to a scale. Schneider et al. and Nakanishi et al. both teach away from the linkage of claim 15 and suggest use of an electrical-type signal to indicate position or movement. As a result, independent claim 15 and dependent claims 16, 18, and 19 are not obvious in view of Schneider et al. and Nakanishi et al., and a notice of allowance is respectfully requested for claims 15, 16, 18, and 19.

In addition to the reasons stated above, claim 19 is not made obvious by the teachings of Schneider et al. and Nakanishi et al. Neither Schneider et al. nor Nakanishi et al. teach or suggest a display further comprising a cylinder having a closed end connected to one end of a spring and the spring connected at a second end to a corresponding indicator. The Office action again fails to establish a prima facie case of obviousness of claim 19.

***Summary***

This amendment is believed to address all of the objections and rejections noted in the July 8, 2008 Office action. As a result, the Applicant respectfully requests that a notice of allowance be issued with respect to pending claims 1-22.

The commissioner is hereby authorized to charge Deposit Account No. 17-0055 in the amount of \$210.00 for the inclusion of one independent claim over three (i.e., a total of four independent claims) and in the amount of \$100.00 for the inclusion of two claims over twenty (i.e., a total of twenty-two claims). No additional fees are believed due for filing this response; however, please charge any additional fees that may be due, or credit any overpayment, to Deposit Account No. 17-0055. No new matter has been added by any of the above amendments or remarks.

As always, the Examiner is invited to contact the undersigned if this amendment has failed to adequately address any of the objections or rejections, or if the Applicant can take any additional action to aid in the allowance of this application.

Respectfully submitted,

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